

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 6653 OF 2022

Sunil Chagan Baviskar .. Petitioner
Age. 48 years, Occupation : Service,
R/o. Hated (BK.), Tq. Chopda,
Dist. Jalgaon.

Versus

- 1] The State of Maharashtra .. Respondents
Through its Secretary,
Social Justice and Special Assistance
Department, Mantralaya, Mumbai 400032.
- 2] The Scheduled Caste, Scheduled Tribe,
De-notified, Nomadic Tribes,
Other Backward Classes and
Special Backward Category,
Divisional Caste Scrutiny Committee,
Nandurbar, Tq. & Dist. Nandurbar.
- 3] Nutan Dnyanmandir,
Adawad, Tq. Chopda, Dist. Jalgaon,
Through its Head Master.

Mr.Mohit S. Shah, Advocate for the petitioner.
Mr.S.G. Sangle, AGP for the respondent/State.

**CORAM : RAVINDRA V. GHUGE &
ANIL L. PANSARE, JJ.
DATED : 30.06.2022**

O R D E R [PER : ANIL L. PANSARE,J.] :-

01. Leave to amend prayer clause granted. The amendment be carried out forthwith.

02. Issue notice to respondent Nos.1 and 2. The learned AGP waives service of notice for respondent Nos.1 & 2. We do not intend to issue notice to respondent No.3, as the petition could be disposed off by issuing appropriate directions to the respondent No.2.

03. By way of amended prayer, the petitioner has questioned the legality and correctness of the order dated 24.03.2022 passed by respondent No.2-Scrutiny Committee, Nandurbar, whereby the caste certificate issued to the petitioner is invalidated. The petitioner claims to be belonging to the caste – Tokre-Koli. The petitioner has relied upon five validity certificates granted to his five paternal relatives. The Committee ignored these five certificates.

04. The learned AGP has strongly supported the impugned order. He

contends that the burden to prove validity is upon the petitioners. The petitioners failed to prove that three out of five validity holders are his blood relatives and that the other two validities were granted without conducting detail enquiries.

05. We have considered the rival submissions. We have gone through the impugned order. Ku. Gitanjali, the cousin sister of the petitioner was granted validity certificate in the year 2005 by the Scrutiny Committee at Nashik. The Respondent No.2-Committee opined that the original record of the case of Ku. Gitanjali was not received and therefore the document submitted by the petitioner was found not sufficient to prove that Ku. Gitanjali is blood relative of the petitioner. Similar is the reasoning for ignoring caste validity issued in favour of Ku. Vandana – the another cousin sister of the petitioner, so also for Mahesh – the cousin brother of the petitioner.

06. The learned Advocate for the petitioner submits that these findings of the Committee in respect of three cousins that there are no documents to show that they are blood relatives of the petitioner, are rendered without examining the contents of the affidavit filed by the petitioner. He

further submits that there is nothing in vigilance enquiry to indicate that these cousins were not blood relatives of the petitioner.

07. What we find is that even if these three validity certificates are ignored, there were two other validity certificates granted in favour of the blood relatives of the petitioner, pursuant to the order passed by the High Court in Writ Petition Nos. 1703 of 1993 and 1917 of 1996. Validity certificates were issued to one Pratap Waman Baviskar and Rasiklal Jagannath Baviskar. Father of Rasiklal, namely, Jagannath is real uncle of the petitioner. Surprisingly, the Committee has ignored these two validity certificates on the ground that the then Caste Scrutiny Committee has issued certificates without conducting detail enquiry. These findings are rendered despite the order passed by the High Court at Aurangabad Bench, has attained finality.

08. In the circumstances, if the impugned order of the Committee is to be given effect to, then there would be an anomaly in the social status of the members of the family, in the sense that some members of the family will have status of Tokre-Koli and will get consequential benefits of such social status, but others including the petitioner will be deprived of such benefits.

09. We may quote two paragraphs of the judgment dated 15.03.2022 in Writ Petition No.11617 of 2017 passed by the Bombay High Court at Principal Seat. The coordinate Bench of this Court has held in paragraph Nos.4 and 5 as under :-

“4. It may be stated here that caste or tribe validity certificate granted to any person is a conclusive proof of the social status of that person and it confirms the genuineness of the social status, whether caste or tribe, claimed by that person. A document which stands as a conclusive proof for one person would also stand as a conclusive proof of the social status of another person, if such other person is a paternal relative of the first person possessing the validity certificate except in a case where the validation of caste or tribe certificate is vitiated by fraud, misrepresentation of facts or suppression of facts.

5. There is a rationale in this approach. In most parts of India, the families are organized on patriarchal basis and follow a patrilineal mode of succession. In such families, members take same caste or belong to same tribe as that of their ancestor traced patrilineally. In such a family, therefore, the relatives cannot be the members of different caste or tribes and must be considered to be in law as having same caste or tribe or community to which their common ancestor from paternal side belonged. It, therefore, appeals to reason that the validity certificate granted to any relative from the paternal side would equally constitute a conclusive proof for the social status of another member of the family, immediate or extended, from the paternal side except in circumstances noted above. This is the law laid down by the Hon’ble Supreme Court in the case of Raju Ramsing Vasave Vs. Mahesh Deorao Bhivapurkar and Ors. (2008) 9 SCC 54, which has been followed by the Division Bench of this Court in the case of Apporva d/o. Vinay Nichale Vs. Divisional Caste Certificate

Scrutiny Committee No.1 and Ors. 2010 (6), Mh.L.J.401.”

10. The record indicates that the common ancestor from the parental side of the petitioner and the five relatives named above is one late Shri Zipru. In the circumstances, unless and until there is material to show that the tribe certificate was obtained by fraud, misrepresentation of facts or suppression of facts, the validity certificate granted to any relative from paternal side would constitute a conclusive proof for social status of another member of the family, immediate or extended from the paternal side. It is nobody's case that the petitioner is not a paternal relative of the five persons named above. It is also not the case that these five relatives or any one of them have obtained the validity certificate by committing fraud or by misrepresentation or by suppression of facts. We are, thus, of the view that respondent No.2 ought to have accepted, at least two validity certificates, which were issued pursuant to the order passed by the High Court, towards reliable proof to the social status claimed by the petitioner. The Committee ought to have allowed the claim, in view of settled position of law, but failed to do so.

11. In the result, the petition deserves to be allowed and stands allowed accordingly.

12. The impugned order is quashed and set aside. Respondent No. 2 – Caste Scrutiny Committee is directed to issue validity certificate to the petitioner as belonging to “Tokre-Koli” - Scheduled Tribe, within a period of two weeks from the date of receipt of copy of this order. No order as to costs.

13. At this stage, learned AGP makes a request to grant liberty to the respondent No.2 – Committee to reopen the cases of five relatives of the petitioners. We are, however, not inclined to grant such liberty. It is up to respondent No.2 – Committee to take such a call adhering to the provisions of law and keeping in mind the two validities having been granted pursuant to the order passed by this Court, which has attained finality.

[ANIL L. PANSARE,J.]

[RAVINDRA V. GHUGE,J.]